IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 13558 of 2004

Between:

V. Srinivasa Rao, S/o Late V. Subba Rao,
R/o Vijayawada, Krishna District.

..... PETITIONER

AND

1 The State of A.P.rep. by its Deputy Commissioner of Excise, Guntur, Guntur District.
2 The Station House Officer, Excise Police Station, Kavali,
Nellore District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction particularly one in the nature of Mandamus or any other appropriate, writ, declaring the action of the respondents in contemplating to auction the lorry bearing No. AP9U 3169 without passing the order of confiscation under the provisions of the act after issuing the show cause notice as stipulated in the act, as illegal, void and arbitrary and violative of the principles of natural justice as well as procedure stipulated in the Act.

Counsel for the Petitioner: Mr.V.R.Avula

Counsel for Respondents 1 & 2: The Government Pleader for Prohibition & Excise.

The Court at the stage of admission made the following Order:

This writ petition is filed seeking a declaration that the action of the respondents in contemplating to auction the lorry bearing No.AP9U 3169 while the confiscation proceedings are still pending, as arbitrary and illegal.

As can be seen from the material on record, the lorry in question was seized by the second respondent-Station House Officer, Excise Police Station, Kavali, Nellore District in the year 1996 on the ground of alleged involvement in transportation of illicit liquor. Admittedly, the proceedings initiated under Section 46 of the A.P. Excise Act for confiscation of the lorry are still pending. It is also brought to my notice that by virtue of the order dated 4-4-1996 in W.P.No.5283 of 1996, the owner was granted interim custody of the vehicle on furnishing bank-guarantee for a sum of Rs.28,000/-. However, the vehicle was again seized in view of the dismissal of a subsequent writ petition in respect of the same vehicle, as infructuous. Still the enquiry is pending, but in the meanwhile, the respondents were contemplating to auction the vehicle. Hence, this writ petition.

Learned counsel for the petitioner states that the bank-guarantee furnished earlier for release of the vehicle is still subsisting and therefore, it would be appropriate to release the vehicle, pending confiscation proceedings before the first respondent-Deputy Commissioner of Excise, Guntur, Guntur District.

Learned Government pleader did not dispute the fact that the bank-guarantee furnished earlier is still subsisting.

In the circumstances, without expressing any opinion on merits, I deem it appropriate

to dispose of the writ petition with a direction to the first respondent-Deputy Commissioner of Excise, Guntur, Guntur District to complete the confiscation proceedings pending on his file and to pass appropriate orders in accordance with law as expeditiously as possible, preferably within a period of six weeks from the date of receipt of this order. Till such orders are passed, the vehicle in question shall not be sold and in case the bank-guarantee already furnished is subsisting, the interim custody be given to the owner on furnishing an undertaking that it will not be alienated and third party interest will not be created till the disposal of the confiscation proceedings.

The writ petition is accordingly disposed of. No costs.

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09-09-2004

kdl

To

1 The Deputy Commissioner of Excise, Guntur,

Guntur District.

2 The Station House Officer, Excise Police Station, Kavali,
Nellore District.

3 Two C.Cs. to the Government Pleader for Prohibition & Excise,

High Court Buildings, A.P., Hyderabad, (OUT).

4 Two C.D. Copies.